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## Developing a portfolio of financially sustainable, scalable basic legal service models

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Briefing paper

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OSF/IDRC

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## Introduction

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1. This briefing paper summarises the findings of a recent study funded by the Open Society Foundations and International Development Research Centre which, against the backdrop of the Sustainable Goals for Development (SDGs), develops a framework for thinking about how basic legal service interventions can be taken to scale in a sustainable manner to enable improved access to justice for people living in the most vulnerable Low Income Countries (LICs) and Fragile and Conflict-Affected States (FCAS). In particular, it considers whether the cost of basic legal service provision is affordable in non-OECD countries and the range of financing options available for scaling up delivery. In doing so the paper sets out – and seeks to inform and encourage further debate of – an approach to calculating the costs of taking particular interventions to scale and to identifying suitable sources of finance.
2. The evidence suggests that only a relatively small proportion of programmes that aim to provide services to the poor are able successfully to reach scale and sustainability.<sup>1</sup> The successful examples which do exist are examples of narrowly targeted solutions to specific challenges in the health and education sectors – for example, water sanitation to reduce childhood mortality<sup>2</sup> and conditional cash transfers to encourage school attendance.<sup>3</sup> By contrast, Tom Carothers’ 2003 assessment of donor engagement in the justice sector/rule of law sector, that “examples of significant, positive sustained impacts are few” remains true today.<sup>4</sup>
3. Indeed, donor funding to the justice sector has, historically, been comparatively low; for the period 2005-2013 justice sector funding comprised only 1.8% of total aid flows, compared with 7.4% and 7.5% for the health and education sectors respectively (see Figure 1 below).

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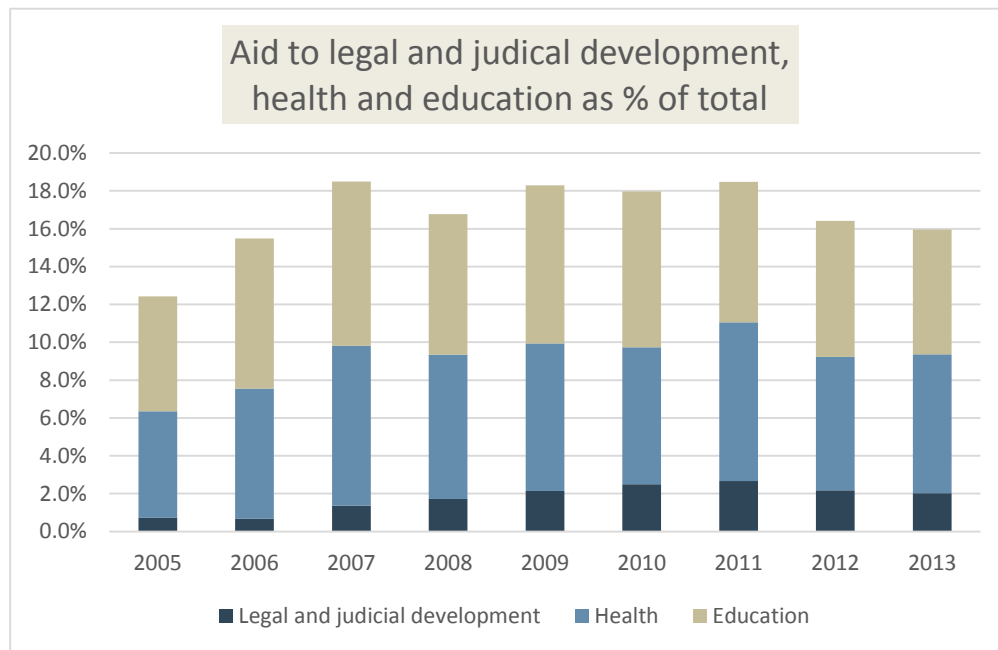
<sup>1</sup> Chandy, L., Hosono, A., Kharas, H.L., & Linn, J. F. (Eds.) (2013). *Getting to Scale: How to Bring Development Solutions to Millions of Poor People*, Brookings Institution Press, pp. 2-3.

<sup>2</sup> BRAC, at [www.brac.net/beyond-boundaries/content/mdg-4-reduce-child-mortality](http://www.brac.net/beyond-boundaries/content/mdg-4-reduce-child-mortality), last accessed 15 July 2015.

<sup>3</sup> For example, Oportunidades in Mexico reaching around one quarter of the population, Bolsa Familia in Brazil reaching 12 million families, and Indonesia’s Kecamatan Development Programme providing small infrastructure grants to half of all rural villages.

<sup>4</sup> Carothers, T. (2003). *Promoting the Rule of Law Abroad: the Problem of Knowledge*, Working Paper 34. Washington, DC: Carnegie Endowment for International Peace.

**Figure 1: Justice, health and education share (%) of all aid**



4. The study draws upon lessons from the successful scaling of basic health and education services, while recognising the factors that render the justice sector unique – such as high levels of politicisation, institutional complexity, plurality, functional complexity, opacity of demand and heterogeneity of (user) need – to begin to answer three key questions:
  - What do we know about the **unit costs of basic legal services and how can we calculate them**;
  - How can **scaled up legal services be financed sustainably**; and
  - What are the **political conditions that enable justice models to be taken to scale**?
5. These are considered in the context of 17 case studies of basic legal service interventions. 12 case studies are in low and middle income countries, and are distilled into five broad models of intervention: community-based paralegals (Liberia, Myanmar, Sierra Leone), microfinancing justice (Bangladesh, Microjustice4All and Microjusticia Argentina), community law centres (China and Rwanda), hybrid models (South Africa and Ukraine) and justice hubs (Kenya and Uganda). 4 case studies are in OECD contexts (Australia, Canada, the UK and the Netherlands), considered by way of comparison.
6. These questions necessarily raise a number of definitional issues, not least what we mean by the term “basic legal services”. Legal services are defined with reference to the types of legal problems they assist to resolve, with the focus here on **problems of a civil and administrative nature** where primary justice needs are most often found. Relevant legal problems include those relating to personal security, family relationships, financial disputes, employment issues, service delivery and violations of consumer rights. *Basic* legal services are understood to comprise those offering an **elementary level of legal education**, such as **advice and assistance with non-court-based forms of dispute resolution**



together with **referral** to providers of formal litigation services and court-based representation where appropriate.<sup>5</sup>

7. As for scaled up services, the study uses the definition of “*serving and effectively benefiting a significant proportion of people living across a country, region or population*” which recognises that scale may involve **increasing the geographic coverage** of a basic legal service, **increasing access** to existing basic legal services by **increasing the capacity or density** of existing provision, **increasing the impact** of basic legal service provision by focusing on strategic issues or particularly vulnerable groups or **reducing the need** for basic legal service provision by providing services that focus on changing the legal and policy environment that shapes the need for basic legal services in the first place.
8. This briefing paper summarises the study’s preliminary conclusions on the first two of these questions and attempts to provide a roadmap as to how to calculate the costs of taking a particular intervention to scale and to identify suitable sources of finance. It finds that basic legal services are affordable in general terms in non-OECD countries and that although developing country governments may be constrained in their ability to finance these, government funding represents only one of a range of financing options available for scaling up service delivery.
9. Although not summarised in what follows, it should be noted that the third strand of this framework – the political economy conditions that may enable or present obstacles to scale up – also warrants consideration when assessing whether and how to take a particular initiative to scale. Initial research suggests that the following factors are critical: whether there is political support for scale-up, at the level of the state as well as front line delivery agencies; whether there is normative fit/sufficient demand for services, such as a tradition of mediation or a pro bono culture amongst lawyers; whether there is resistance from elite/vested interests, including traditional leaders, lawyers and government officials; and whether there is capacity for scale-up within government and delivery organisations.
10. It is hoped that the approach proposed and preliminary conclusions drawn will assist a wide range of stakeholders in discussions on expanding the available possibilities for the development and financing of scaled up interventions, capable of meeting the primary justice needs of the poor and vulnerable.

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<sup>5</sup> The study has not generally treated national models of legal aid for formal litigation services and court-based representation as models of basic legal service provision, considering these to be more analogous to secondary healthcare and education. Nevertheless, some of the case study providers examined some court-based representation amongst the wider range of services they offer, including the Bangladesh Rural Advancement Committee’s Human Rights and Legal Aid Services, China’s Legal Aid Centres, Rwanda’s Maison d’Accès à la Justice and Legal Aid Ontario in Canada.



## Main findings

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### The Cost of Basic Legal Services

- 1.1 Analysing costs and benefits is key to understanding the feasibility of scaling up basic legal service provision. The study therefore draws on a range of country legal needs surveys to develop a new methodology for calculating the unit costs and affordability of basic legal services, and applies it to twelve of our country case studies. Its application suggests that the range of per capita costs for scaling up basic legal service provision for the cases studies in non-OECD countries is lower than in OECD countries but still high relative to government revenues and spending on the judiciary in those countries. This analysis is preliminary and not without caveats, but points nevertheless to the general affordability of basic legal services and is intended to encourage greater consideration of approaches to costing the scale up of such interventions.
- 1.2 The study costs basic legal service delivery from the bottom up, maintaining a focus on legal needs of a civil and administrative nature and costing the national scale up of a pilot service that seeks to respond to those needs.<sup>6</sup> The methodology consists of four steps.<sup>7</sup>

#### Methodological Step 1: Determining Input Costs

- 1.3 Categories of costs to be considered include monetary,<sup>8</sup> opportunity<sup>9</sup> and intangible<sup>10</sup> costs. Since the monetary costs to users are often free in donor-funded basic legal service interventions and since there is a paucity of data available in relation to opportunity and intangible costs, the costs of basic legal service provision are mostly approximated using the input costs, for example, the annual operating budget of a community legal centre or paralegal service.

#### Methodological Step 2: Determining Size of Community Served

- 1.4 Tools and methods for estimating the reach of service provision or size of the community served include legal needs surveys,<sup>11</sup> case capacity and geographic reach.<sup>12</sup> The most robust approach to

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<sup>6</sup> The unit costs of legal service provision may also be ascertained by costing a national justice system from the top down. An inherent value of this approach is its potential to assist justice sector actors to establish a stronger case for funding. Costs are most often identified in terms of (a) % of GDP or government spend and (b) the per capita cost. Such benchmarking facilitates an assessment of spending on justice relative to other services and helps to identify those countries not be able to finance basic legal service provision in the short-term owing to limited revenue capacity and those where the primary constraint is not affordability but the low prioritisation of justice provision.

<sup>7</sup> It should be noted that in our application of this methodology to case study countries, we have not always been able to apply all four steps owing to data gaps.

<sup>8</sup> These include, at the micro-level, lawyers' or paralegals' fees, filing fees and travel expenses and, at the macro-level, for example, the cost of regulating the legal profession.

<sup>9</sup> These include, at the micro-level, the resources justice service users expend on their paths to justice such as foregone earnings and, at the macro-level, the resources spent on providing basic legal services that could have been allocated elsewhere.

<sup>10</sup> These include, at the micro-level, the stress and damage to relationships associated with a given path to justice, including that resulting from perceived unfair results, and, at the macro-level, delays to the resolution of cases via the formal system.

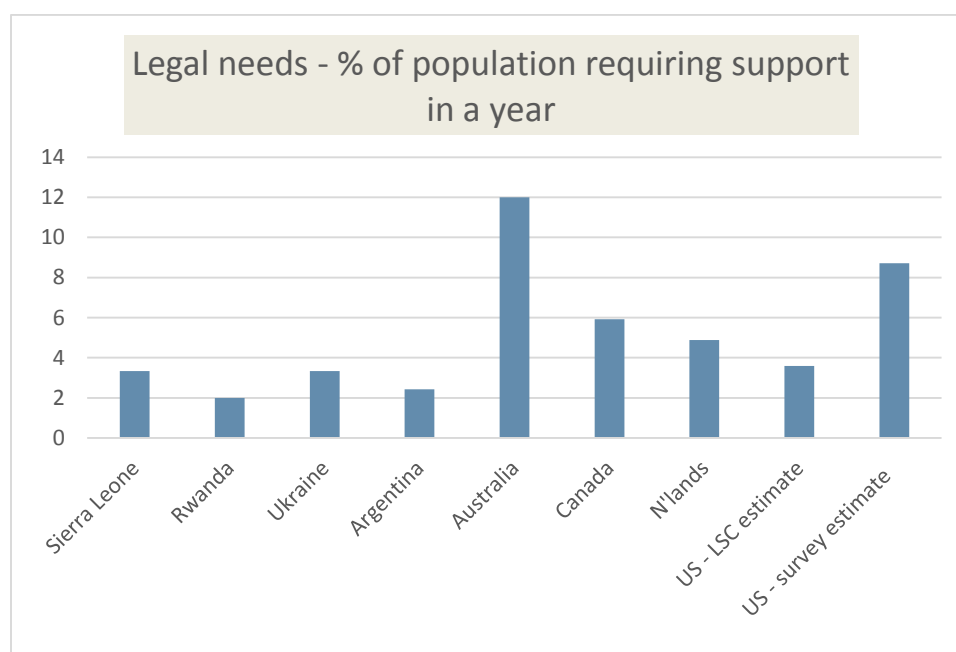
<sup>11</sup> These can be used to identify the proportion of the population with a basic legal service problem across a particular geographic area or across the population as a whole.

<sup>12</sup> Data on the number of people who can walk to a community justice adviser or centre is a non-case-based way of assessing reach, albeit one that fails to reflect the capacity of service providers.

determining catchment area in the context of basic legal service provision is likely to be a combination of these approaches.

- 1.5 In this study, for some cases studies it was suggested that the existing level of service provision was sufficient for a given geographic community of a stated size, allowing a straightforward per capita cost estimate for scaled up provision.<sup>13</sup> However in many other instances (all low/lower middle income countries), data was only available on the number of cases handled, which required an extrapolation to estimate the size of the community those cases served.<sup>14</sup> In these countries, legal needs surveys across a range of countries were used to estimate the percentage of the population with legal needs i.e. the annual demand for basic legal services. This analysis produced the conservative assumption of annual demand at 2% of the population in low/lower middle income countries (higher in high income/OECD countries), implying each case covered the legal needs of 50 people (see Figure 2 below).<sup>15</sup> This figure was used as a case multiplier to extrapolate the number of cases that need to be handled at a national level each year from the current number of cases handled by the programme.

**Figure 2: Legal needs -- percentage of population requiring support in a year<sup>16</sup>**



<sup>13</sup> This approach was used in the cases of Liberia, Myanmar (land sector specific), Sierra Leone, South Africa, Australia, Canada and the UK however, the figures produced are likely to be an underestimate, given the focus on casework as a method of meeting legal needs to the exclusion of other activities such as legal education and awareness-raising,

<sup>14</sup> These cases included Argentina, Bangladesh, Kenya, Rwanda and Ukraine.

<sup>15</sup> Appendix 2 of the full report provides an overview of this needs-based assessment of required case capacity in tabular form.

<sup>16</sup> Figure 2 shows the range of countries across which legal needs surveys were assessed to estimate the percentage of the population with legal needs and to arrive at the conservative assumption that the annual demand for basic legal services in low/lower middle income countries is 2% of the population, implying each case covers the legal needs of 50 people



- 1.6 The input costs for a model of service provision and an estimate of the size of the community served can be combined to produce an estimate for the unit or per capita cost of basic legal service provision. The advantage of understanding units as individuals served, rather than a community justice adviser, community legal clinic or other service-provider unit, is that cross-country comparisons can be more easily made.

### **Methodological Step 3: Determining Benefits**

- 1.7 Different categories of benefit to be considered include quality of procedure<sup>17</sup> and quality of outcomes<sup>18</sup>. Owing to a lack of data, it has not been possible to incorporate benefit data into our analysis of unit costs; however, the full study discusses two existing studies where this type of data has been incorporated.

### **Methodological Step 4: Scaling up and Benchmarking**

- 1.8 The per capita unit cost is then scaled up according to population size to estimate the costs and benefits of service provision to the entire population. The linearity of this approach masks the nuances and complexities of real world situations including capacity issues, potential economies of scale and the potential costs associated with delivering services to the hardest to reach populations. Nonetheless, this scale up cost provides the size of the funding required for national provision of basic legal services.
- 1.9 Then, by benchmarking the unit cost per capita against measures of the economy, government resource and spending prioritisation it is possible to determine the government's prioritisation of justice relative to other sectors and the affordability of funding basic legal services to them.
- 1.10 It should be noted that certain caveats attach to such cross-country comparisons, particularly where not all case study providers fall neatly within our definition of "basic legal services". Most notably, unlike the bulk of our case studies: both BRAC's Human Rights and Legal Aid Services programme and Legal Aid Ontario in Canada offer court representation alongside information and advice, alternative dispute resolution and referrals; Namati's intervention in Myanmar does not address a range of legal problems but deals specifically with land rights; and approximately 10% of the cases dealt with by Rwanda's Maisons d'Accès à la Justice relate to criminal rather than civil matters. The results of this analysis nevertheless provide a useful starting point for further research.

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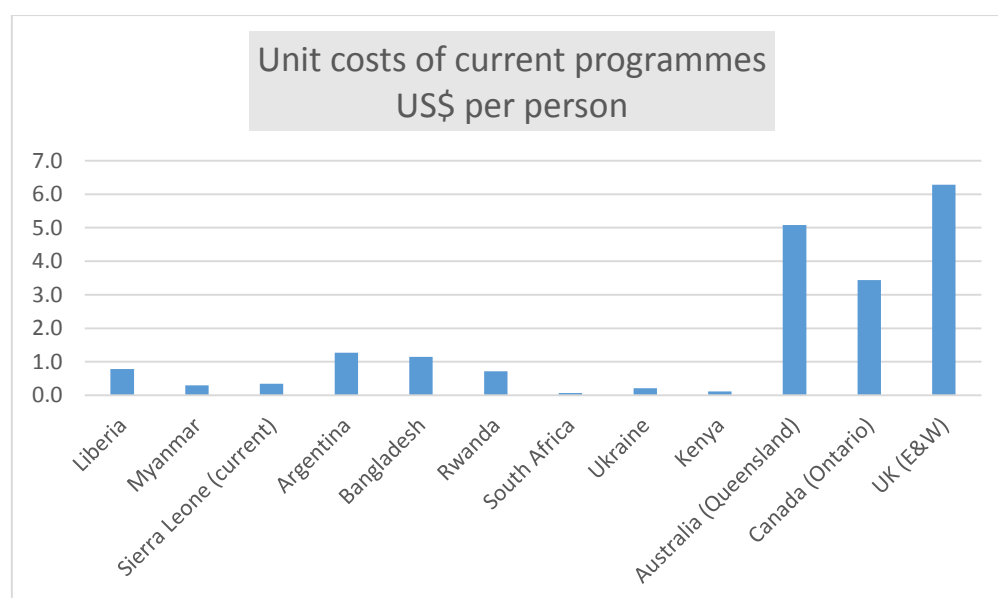
<sup>17</sup> This may, on a micro-level, involve assessing people's perceptions regarding the fairness, accuracy and consistency of the procedure but also have societal benefits at the macro-level such as greater adherence to the law.

<sup>18</sup> This may, on a micro-level, involve assessing people's perceptions regarding the distribution of compensation, punishment of offenders and opportunities for reconciliation but also have societal benefits at the macro-level such as security, empowerment and social cohesion.

## Preliminary Findings on Cost

1.11 Figure 3 and Appendix 2 show that **the range of per capita costs of scaling up basic legal service provision for the non-OECD case studies covered is USD 0.1 to USD 1.3 per capita.**<sup>19</sup> In four cases where separate detailed analysis (Myanmar, Sierra Leone, Rwanda and South Africa) has been carried out on the costs of nationwide coverage based on scaling up current provision the costs are much lower and range from USD 0.1 to 0.3.<sup>20</sup> In OECD countries, it is between USD 3 and USD 6, likely reflecting the higher cost of wages.

Figure 3: Unit costs of current programmes (USD per person)



1.12 Appendix 3 benchmarks these unit costs against five key indicators: GDP; government revenue and spending on judiciary, health and education. This data merits further analysis but three points stand out:

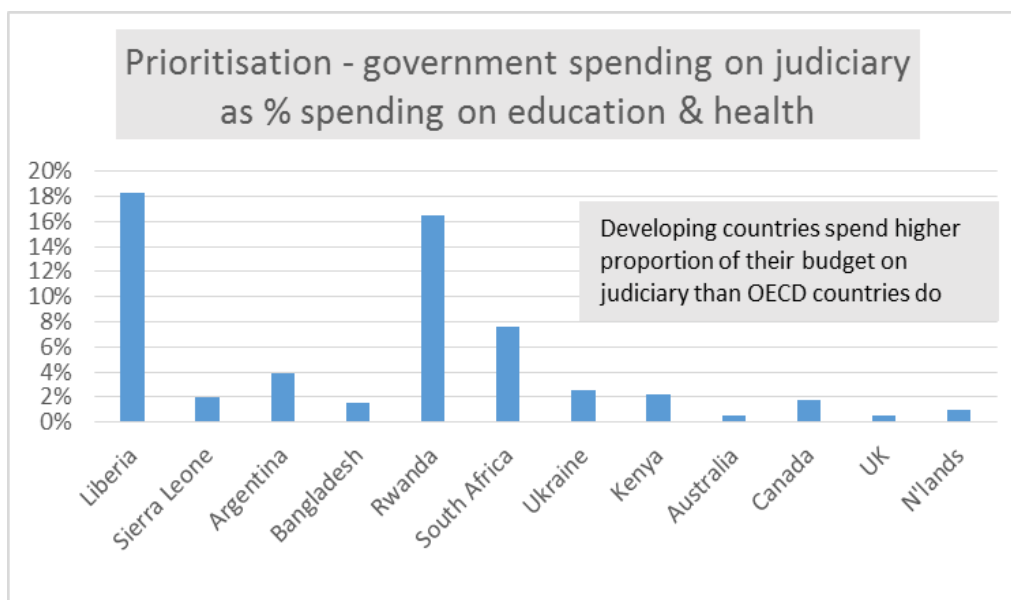
- **Developing countries are already strongly prioritising spending on judiciary.** Figure 4 shows that in all the developing country case studies spending on judiciary as % of total spent on health and education is at least as high as the OECD average of 1%. In contrast, in most countries spending is 2-8 times higher than in the OECD and in Rwanda and Liberia the spending ratio is 15 times higher.

<sup>19</sup> This seeks to provide an overview without endorsing the drawing of like for like comparisons; since the methodologies behind the cost and benefits vary widely and the programmes operate in hugely distinct contexts, such comparisons should not be drawn haphazardly.

<sup>20</sup> Myanmar, Sierra Leone, South Africa and Rwanda.

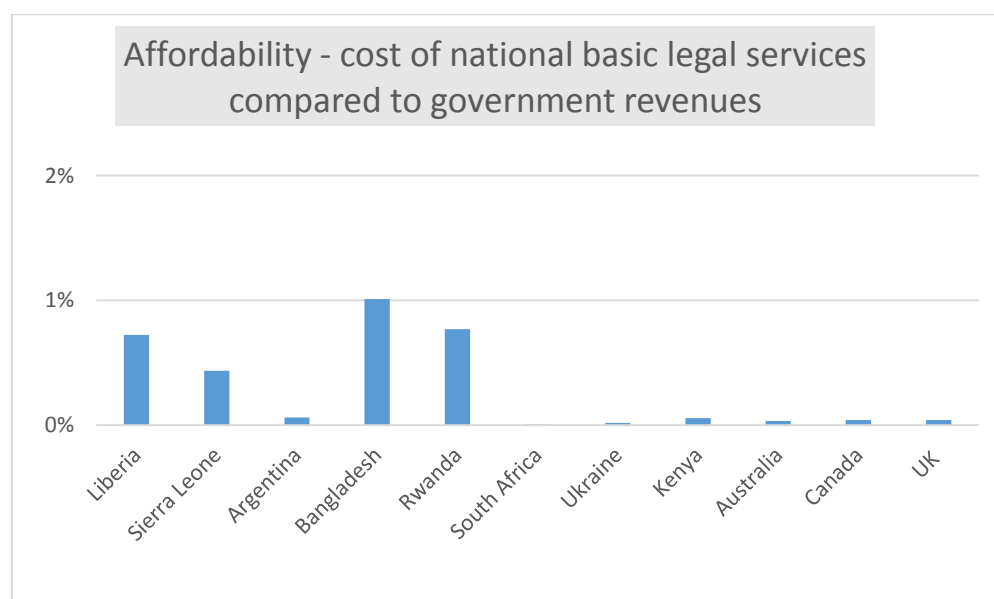


**Figure 4: Prioritisation – government spending on judiciary as a percentage of spending on education and health**



- **In three low/lower middle income countries the cost of basic legal services looks very high – and potentially unaffordable – relative to government revenues.** Figure 5 shows that in the OECD countries there is a striking similarity in the ratio of basic legal services to revenue – the range is just 0.03-0.04%. By contrast the ratio in Sierra Leone is ten times larger, Liberia 17 times and Bangladesh 25 times. South Africa by contrast seems very affordable – just one tenth of the OECD level.

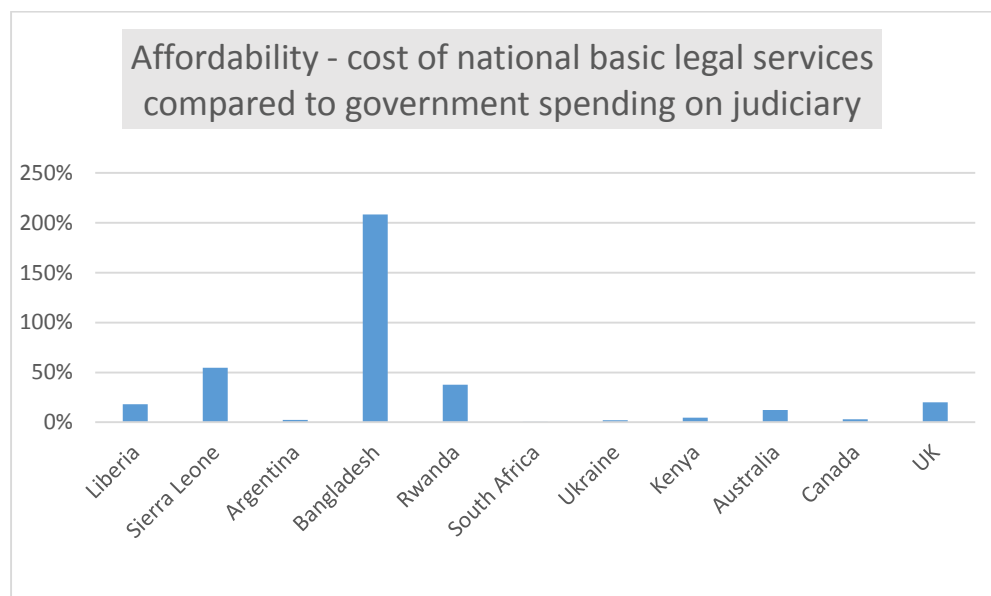
**Figure 5: Affordability – cost of national basic legal services compared to government revenues**



- **Two of these three countries also appear to be spending a disproportionately high amount on basic legal services relative to their spending on judiciary,** although it should be noted that

this includes government tax revenues as well as on-budget support from donors. Figure 6 shows that in OECD countries the ratio ranges from 3% to 20%. By contrast the ratio in Sierra Leone is over 50% and Bangladesh over 200%. Again South Africa appears very affordable – its costs are just 0.1% of judiciary spend.

**Figure 6: Affordability – cost of national basic legal services compared to government spending on judiciary**



1.13 In short, although basic legal services are affordable in general terms in non-OECD countries, governments may be constrained in their ability to finance them.

## Financing Basic Legal Services

1.14 The study goes on to set out a broad range of financing options beyond government funding. Drawing on examples from the health and education sectors, a typology of models spanning national government, donor, philanthropic and private sector sources is developed.

1.15 The suitability of each of these financing options for particular interventions will depend largely on the characteristics of the service for which funding is being sought, with relevant considerations including the following:

- **Is there a LIC national/civil interest in ensuring certain basic legal services are provided and can the government fund the provision?**
- **Can the revenue from recipients of basic legal service cover costs** or is there need for some subsidy, pro bono service, foundation grant etc.?
- **Is there a measurable financial outcome?** This may include considering short-term gains in the form of consumers willing to pay a small amount for a service as well as longer-term gains such as investors benefiting from consumers receiving payouts or being able to realise asset value.



- **Is there a measureable social outcome?** This may include considering the extent to which a particular model is likely to assist particular sections of society as well as to reduce the incidence of particular types of legal problem.

1.16 The following summary sets out the models identified and draws preliminary conclusions as to the characteristics likely to prove most critical to accessing these sources of finance on a sustainable basis.

### **Financing Option 1: Government and Government-marshalled Financing**

1.17 Lessons from the education and healthcare sectors demonstrate that national governments may ensure alignment between development goals and line agencies by *reinforcing national strategies with budget allocations* that act as incentive and accountability mechanisms<sup>21</sup> or by creating priority sectors into which they channel private finance. So, the Nigerian and Indian governments have identified education as a priority area alongside agriculture and SMEs, requiring financial institutions and other private sector organisations to allocate a percentage of their profits or assets to these sectors. Such mechanisms are already being applied in the justice sector. For example, in Uganda, Rwanda and Sierra Leone, justice sector strategies whose aims include enhancing community level access to justice nest under broader strategies linked to national resource allocation processes. In Sierra Leone, Namati has advocated for a provision, now included in the government's draft Bioenergy and Food Security Guidelines, which requires that firms interested in large-scale land acquisitions contribute to a basket fund which will support legal representation for land-owning communities.<sup>22</sup>

1.18 *Cross-sector programming* can also offer opportunities for providers to access sector-specific financing. In Mozambique, cross-sector funding opportunities are being utilised by Namati's community-based paralegal service which focuses on ensuring the effectiveness of primary health care.

1.19 *Social impact bonds* (SIBs) combine public investment with private finance to enable delivery organisations to provide services on a Payment by Results basis, according to which a government pays service providers on the achievement of certain pre-agreed results. An example is the Punjab Education Fund which subsidises primary and secondary schools on a per-student basis according to minimum student pass rates. SIBs are beginning to be utilised in the criminal justice sphere, for example to reduce the reoffending rates of inmates from Peterborough Prison in the UK.

### **Financing Option 2: Donor financing**

1.20 Donor funding mechanisms include challenge funds and vertical funds. *Challenge funds* are a type of competitive grant used to finance innovative ideas in a way that, via matched funding, reduces donor risk, and were used widely by DFID in the 2000s to promote innovative business activities.

<sup>21</sup> Linn, J. 'Incentives and Accountability for Scaling Up' in Chandy et al. (2013), *Getting to Scale: How to Bring Development Solutions to Millions of Poor People*, p.147.

<sup>22</sup> Namati (draft). *Building a Movement of Grassroots Legal Advocates: Strategic Plan 2016-2018*.



*Vertical funds* are global programmes for allocating aid that focus on a particular thematic issue and are implemented via specially-created agencies that work towards clearly articulated goals. These became the vehicle of choice as donors sought to support the fulfilment of the MDGs with prominent examples including the Global Fund for AIDS, Tuberculosis and Malaria, Global Partnership for Education, International Fund for Agricultural Development and the Global Agriculture and Food Security Program.<sup>23</sup> Such funds may accelerate the availability and predictability of funds via engagement in the capital markets, with the International Finance Facility for Immunisation – established in 2006 to generate funding for the programmes of the Global Alliance for Vaccines and Immunisation – using long-term pledges from donor governments to sell 'vaccine bonds' in the capital markets and raising more than \$5 billion to date – three times the donor funds received into its accounts over the same period.<sup>24</sup>

- 1.21 Donors may also incentivise investment in scale up activities through *innovative funding modalities*, most notably Payment by Results. This is currently being trialled in the health sector with DFID Uganda testing the effects of funding to two sets of health clinics, one on an input and the other a results basis.

### Financing Option 3: Philanthropy

- 1.22 A large number of philanthropic organisations (international organisations such as the Ford Foundation, Joffe Charitable Trust and MacArthur Foundation, as well as local philanthropists) engage in *grant-making* activities in areas that overlap with the provision of basic legal services (including democratic governance, human rights and women's empowerment). However, in contrast to basic education and healthcare, few directly fund basic legal service delivery. As with donor finance, grant-funding is subject to evolving funding trends and so likely to be unsustainable, but may be useful for activities with clear and short timelines such as piloting new services.
- 1.23 *Endowment funds* can be created to generate income from capital investments to fund activities that address social needs, and offer a more sustainable footing for funding providing that they are able to maintain their income generating assets. Similarly, individuals or organisations may use financial resources to back guarantees to other entities who, in turn, use them to raise funds for activities. Prominent examples include Social Capital, a US-based organisation which uses guarantees to raise commercial lines of credit to on-lend to emerging market SMEs.<sup>25</sup>
- 1.24 *Pro bono legal assistance* represents a different type of philanthropic support which is perhaps peculiarly available to the justice sector: the provision (by either international or local lawyers) of free or low cost legal services to individuals that would be unable to afford legal advice. Local pro bono service provision may be coordinated by professional and/or legal aid associations such as South Africa's Association of University Legal Aid Institutions Trust (AULAI), a voluntary association

<sup>23</sup> Garner, D. and Kharas, H. 'Scaling Up Impact: Vertical Funds and Innovative Governance' in Chandy et al. (2013), *Getting to Scale: How to Bring Development Solutions to Millions of Poor People*.

<sup>24</sup> IFFIm. 'Origins of IFFIm', available at [www.iffim.org/about/origins-of-iffim](http://www.iffim.org/about/origins-of-iffim), last accessed 12 November 2015.

<sup>25</sup> Social Capital, available at [www.socialcapital.com](http://www.socialcapital.com), last accessed 12 November 2015.



of university law clinics offering legal advice and education provided by volunteer law students.<sup>26</sup> Funding for operating costs is provided by outside donors, including the Ford Foundation and Attorneys Fidelity Fund, indicating that delivering services at scale is unlikely to be viable on an entirely pro bono basis.

- 1.25 Most recently, *Development Impact Bonds* (DIBs) – a variation on SIBs, above – have brought together private investors, non-profit and private sector service delivery organisations, governments and donors to deliver social outcomes. Private investors provide upfront funding for development programmes and earn a return if evaluation validates the delivery of a set of pre-agreed results, generating incentives for investors to put in place the necessary feedback loops and performance management systems required to achieve the desired outcomes and, in turn, facilitating more effective approaches to service delivery. Investors are remunerated by an external funder rather than host-country governments, overcoming a core obstacle to sourcing financing for service provision given the revenue constraints faced by LIC governments. The first DIB was launched in June 2015 in Rajasthan, India, to improve educational outcomes, with the UBS Optimus Foundation providing the upfront investment, NGO Educate Girls leading service delivery and CIFF the outcome payer.

#### **Financing Option 4: Commercial and Semi-commercial Models**

- 1.26 Commercial models may offer viable financing options where the provision of a particular basic legal service can be monetised or there is some other financial incentive for investment. *Impact investing* – the provision of funding to generate financial and social returns – although still a relatively new practice, has attracted funds for health and education services with well-known examples including Omega Schools in Ghana, Bridge Academies in Kenya and Uganda, and the Aureos Health Fund which invests private equity in affordable health provision across Asia and Africa.
- 1.27 *User fees* affordable to those at the bottom of the pyramid may be offered, either by unbundling service provision – currently being explored by organisations like Cooperative Legal Services in the UK – or via legal insurance – already prevalent in the Netherlands and taking off in Namibia via Trustco, an International Finance Corporation investee diversified financial services company which provides banking, financial and insurance services including for legal fees.

#### **Financing Option 5: Hybrid Models**

- 1.28 *Hybrid investment funds* involve collaboration between different entities – donors, LIC governments, private sector investors and NGOs – with their prevalence speaking to the need for tailored, context and case specific approaches to the development of sustainable funding models. Examples include the Medical Credit Fund which seeks to increase the delivery of affordable quality healthcare services, and M-Pesa, a mobile phone-based money transfer and microfinancing service which originated in East Africa, financed by Vodafone. The Medical Credit Fund is a guarantee model

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<sup>26</sup> Atlantic Philanthropies, available at [www.atlanticphilanthropies.org/grantee/association-university-legal-aid-institutions-trust](http://www.atlanticphilanthropies.org/grantee/association-university-legal-aid-institutions-trust), last accessed 12 November 2015 (page may no longer be live)



which draws on a combination of public and private capital to offer loans/guarantees to healthcare providers in combination with grants for technical assistance to reduce the risks associated with investment. M-Pesa matched investment from Vodafone with that from a DFID challenge fund and small user fees to become, the most successful mobile phone based financial service in the developing world.

- 1.29 As in the fields of education and healthcare, the *cross-subsidy* of basic legal services may also be an option where providers of basic legal services operate portfolios of sufficient size and diversity for less profitable services to be sustained by more profitable ones. An example is BRAC's Human Rights and Legal Aid Services Programme which cross-subsidises its social development and legal services programmes with income generated by its microfinance and social enterprises, alongside a small user fee.

### Preliminary Findings on Financing

- 1.30 **The suitability, and indeed accessibility, of many of these models depends on an intervention's ability to provide a financial outcome by monetising service provision and/or to generate a social benefit susceptible to clear measurement.** For example, the viability of these various models as sources of finance for basic legal service provision depends: in the case of DIBs, on the ability of interventions to yield measurable outcomes; in the case of impact investment, on being able to monetise service delivery and measure clear outcomes; and, in the case of hybrid funds, again on their ability to monetise provision, as well as the existence of a specific issue or entry point around which multiple interests can coalesce.
- 1.31 Certain types of basic legal service provision may be more readily monetisable than others. For example: debt issues may be more likely to produce a monetary outcome that can deliver a financial return to private sector financiers, whilst child custody disputes may be less likely to do so.
- 1.32 Similarly, the outcomes of certain types of basic legal service provision, whether financial or social, may be more easily measured than others. For example, urban land titling or business registration may be more suited to quantitative measurement e.g. the value of loans secured against titled land or credit a business is able to access, whilst in cases relating to gender-based violence quantitative measurement is less likely to be feasible or appropriate.
- 1.33 **Unbundling basic legal service provision may therefore be key to both monetising and measuring basic legal services to unlock non-government marshalled financing options.** Appendix 4 seeks to unbundle categories of legal problem addressed by basic legal services and to map them against their suitability for different sources of finance. The legal problems covered broadly map onto property, family, contract and commercial law. The monetisability of land, debt and business issues lends them to impact investment while the measurability of documentation issues performs a similar function.



## Recommendations

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2.1 The study provides a framework for thinking about how to take basic legal services to scale in a sustainable manner and in doing so gives rise to a number of recommendations for funders and delivery organisations. These are as follow:

- **Developing an agreed definition of basic and primary justice concepts** that sit within Global Goal 16 to put the justice sector on similar footing to education and health in global debates on progress towards the achievement of the Sustainable Development Goals and related financing.
- **Establishing a vertical fund** to focus international attention on the delivery of access to justice and to enable transparent progress towards Goal 16 of the SDGs.
- **Using macro-level data to benchmark costs** including potentially developing three affordability benchmarks relative to revenue, spending on judiciary and spending on health and education to facilitate cross-country comparisons. These might be expressed in the form of ranges i.e. clearly affordable; affordable; possibly unaffordable; definitely unaffordable (when, for example, ratios are more than three times that of OECD countries).
- **Using legal needs surveys more widely in justice sector interventions** to better understand the scale and type of demand for basic legal services (including demand on both criminal and traditional justice systems), as well as what demand is and is not being met by existing provision and the reasons for this (for example, because existing provision is unaffordable for most people).
- **Piloting more innovative financing mechanisms and modalities, as well as partnerships between donors and private sector impact investors** to open up new and more sustainable funding streams, create a 'proof of concept' for these vehicles, and facilitate effective and accountable service delivery. To include consideration of unbundling service delivery to enable the identification of those areas most susceptible to monetisation and clear measurement of outcomes.
- **Incorporating the collection of a broader range of cost and benefit data** in basic legal service programming (including, where possible, non-monetary costs and monetary and non-monetary benefits) to assess the value for money of provision, support bids for financing to a wider range of funding sources and enable improved programme sustainability.

## Appendix 1: Key Characteristics and Typography of Basic Legal Service Intervention Case Studies

Typography	Intervention	Type of Legal Problem	Geography of Service Provision	Identity of Service Provider	Nature of Funding Source	Characteristics of Broader Context
<b>Community-based paralegals</b>	Liberia's Community Justice Advisors	Wide range including land, labour and gender-related issues	Community level and rural - 520 communities across seven of fifteen counties	Peripatetic paralegals, based out of town offices and supervised by lawyers	Annual grant funding from the Carter Center	Widespread mistrust of and high levels of elite capture in formal system
	Myanmar's Land Paralegals	Land rights	Community level and rural – 150 village tracts	Peripatetic paralegals	Grant funding from OSJI and Namati	Enabling legislation but poor public understanding and resistance from authorities
	Sierra Leone's Community-Based Paralegals	Range of issues, with recent focus on land and environmental justice	Community level and rural – 33 offices across eight districts	Peripatetic paralegals	Initial grant-funding from donors (incl. OSJI and GIZ); state funding enshrined in law but not realised	Post-civil war
<b>Micro-financing Justice</b>	Bangladesh's BRAC-run HRLS	Wide ranges of issues	Community level and rural – 517 clinics in 54 of 61 districts	Lawyers and caseworkers	Grant-funding from DFID; small client fee; model of cross-subsidisation	BRAC is the largest NGO in the world; leading service provider
	Bolivia, Peru, Kenya and Uganda's Microjustice4All	Documentation relating to identity, property, income generation and family issues	Community level and urban via private and third sector hosts – exact geography of provision varies by country	Paralegals and law students, operating from host premises and supervised by lawyers	Donor funding for start-up, and ongoing legal education and capacity building; in-kind contributions from host organisation; user fees	N/A
	Argentina's Microjusticia	Documentation, women and children's rights, disability and health-related rights, immigration and labour	Urban and hosted by the city branch offices of microfinance institution, as well as outreach work on city outskirts alongside NGOs	Law students, supervised by tutors	Cross-subsidisation from legal services to the private sector; in-kind contributions from hosts; some funding from individual private philanthropists	Post-2001 economic crisis, widespread inequality including as regards access to basic rights



Typography	Intervention	Type of Legal Problem	Geography of Service Provision	Identity of Service Provider	Nature of Funding Source	Characteristics of Broader Context
<b>National community law centres</b>	China's Legal Aid Centres	Wide range of issues	National network of 3500 legal aid centres, 50,000 legal aid working stations and info points at town and village level	Lawyers seconded from private practice and paralegals	Core funding from provincial and county-level government; grant funding from the Legal Aid Foundation	Central government interest in promoting social harmony
	Rwanda's Maison d'Accès à la Justice	Wide range of issues	District level – one legal centre per each of the country's 30 districts	Qualified lawyers, one with a focus on women's and children's rights	State-funded with technical and financial support from UNDP and UNICEF	Part of broader state-building efforts
<b>National hybrid models</b>	South Africa's Community Advice Offices	Wide range of issues including community conflict dispute resolution, alongside broader services e.g. job counselling, facilitating access to services	Community level and mixed	Paralegals and volunteers	Limited funding, pooling community resources and volunteerism	Growth of CAOs in context of Apartheid in 1980s. Now part of broader system that includes Legal Aid South Africa
	Ukraine's Community Legal Centres	Social security, property rights, labour rights, public services and other administrative matters	Community level and mixed – 32 legal centres across 20 regions	Lawyers, local paralegals and pro bono	Local municipalities and donors	Large rural population with limited access to public services or information. Part of broader system that includes government funded regional centres that provide secondary legal aid
<b>Justice hubs</b>	Kenya's M-Sheria Project	Wide range of issues	Remote – SMS service	Pro bono lawyers	Donor funding from HiiL and Dutch bank, ING	Large rural population; small legal profession based primarily in cities

## Appendix 2: Summary of Unit and Scale Up Cost Analysis

Country	Programme				National Scale Up		
	Annual cost (USD m)	Cases handled	Community served	Unit cost of serving community (USD per capita)	Population (m)	Cost (USD m)	Notes
<b>Liberia</b>	0.45	1,272	575,329	<b>0.78</b>	4.4	3.4	
<b>Myanmar</b>	3.8		Assume whole farmer population	<b>0.3</b>	53.0	15.5	Namati estimate for reaching all farmers, not entire population (53m).
<b>Sierra Leone</b>	0.25		736,000	<b>0.34</b>	6.3	2.1	Timap current programme less USD 10k Freetown; Namati estimate for national programme
	2.0		Assume whole population	<b>0.36</b>	6.3	2.0	
<b>Argentina</b>	0.028	441	22,050 (estimate)	<b>1.3</b>	43.0	54.7	Multiplier of 50 assumed (cases-community).
<b>Bangladesh</b>	0.3	5,000	250,000 (estimate)	<b>1.1</b>	159.1	181.8	Multiplier of 50 assumed (cases-community).
<b>Rwanda</b>	0.8	22,168	1,108,400 (estimate)	<b>0.7</b>	11.3	8.1	Multiplier of 50 assumed (cases-community). National scale up total legal aid, not MAJ programme
<b>South Africa</b>	3.5		Assume whole population	<b>0.1</b>	54.0	3.5	Estimated cost of Citizen Advice Offices
<b>Ukraine</b>	0.44	42,284	2,114,200 (estimate)	<b>0.2</b>	45.4	9.4	Multiplier of 50 assumed (cases-community).
<b>Kenya</b>	0.1	20,000	1,000,000 (estimate)	<b>0.1</b>	44.9	5.1	Multiplier of 50 assumed (cases-community).
<b>Australia</b>	23.8	29,266	Assume whole state population	<b>5.1</b>	23.5	119.3	Legal aid in Queensland
<b>Canada</b>	44.0		Assume state whole population	<b>3.4</b>	35.5	122.2	Citizen advice bureau in Ontario
<b>UK</b>	361	2.5 million	Assume whole population	<b>6.3</b>	64.5	405.7	Citizen Advice Bureau in England and Wales

## Appendix 3: Summary of Benchmarking Analysis

Programme	Basic Legal Service Unit Cost		GDP data	Revenue data	Spend (%GDP)			Spend per capita			Prioritisation of judiciary	Affordability of Basic Legal services	
	Current Programme	National Programme	GDP per capita	Revenue per capita	Judiciary	Health	Education	Judiciary	Health	Education	Ratio of judiciary spend to total spend education and health	Ratio of basic legal services to revenue	Ratio of basic legal services to judiciary spend
	USD per capita	USD per capita	USD per capita	USD per capita	% GDP	% GDP	% GDP	Per capita	Per capita	Per capita	%	%	%
Liberia	0.78		370	108	1.2	3.6	2.8	4	13	10	18	0.72	18
Myanmar		0.3	1,270	126	n/a	0.5	0.8		6	10			
Sierra Leone	0.34	0.36	710	78	0.1	1.7	2.8	0.6	12	20	2	0.40	51
Argentina	1.3		14,160	2,124	0.4	4.9	5.1	55	697	722	4	0.06	2
Bangladesh	1.1		1,080	113	0.05	1.3	2.1	1	14	23	1	1.01	208
Rwanda	0.7	0.3	700	93	1.9	7	5	2	46	35	16	0.31	15
South Africa		0.1	6,800	2,114	0.8	4.3	6.0	54	294	408	8	0.003	0.1
Ukraine	0.2		3,560	1,317	0.3	4.2	6.7	10	151	239	3	0.02	2
Kenya	0.1		1,290	205	0.2	2	6.7	2	24	86	2	0.06	5
Uganda			680	67		4	2		29	15			
Australia	5.1		64,680	15,523	0.06	6.3	4.9	41	4,065	3,169	1	0.03	12
Canada	3.4		51,690	8,787	0.22	7.6	5.3	114	3,918	2,740	2	0.04	3
Netherlands			51,210	19,921	0.15	10.7	5.5	78	5,483	2,817	1		
UK	6.3		42,690	15,368	0.07	7.6	5.8	31	3,252	2,476	0.5	0.04	20

## Appendix 4: Summary of Financing Models and Suitability

LEGAL PROBLEM OR ISSUE	POTENTIAL FUNDING SOURCE						
	Donor	LIC government	Grant-making	Pro bono	SIBs/DIBs	Impact investing	Hybrid
	Subsistence needs e.g. water, shelter	H	H	H	H	L	H
	Identity and document issues	H	M	H	H	M	H
	Land issues	H	M	M	M	H	H
	Employment issues	L	L	L	M	L	M
	Family and gender- related issues	H	M	H	H	L	H
	Goods and services issues	L	L	L	M	L	M
	Community issues	M	L	M	M	L	M
	Business issues incl. investment climate	M	M	L	L	M	H
	Debt issues	L	L	L	M	M	H
	Financial services issues e.g. fraud	L	L	L	L	M	H